

## REMARKS/ARGUMENTS

Claims 1-14 are pending in the application. Claims 3 and 7-14 have been provisionally withdrawn as being drawn to a non-elected invention. Reconsideration of this Application is respectfully requested.

### 35 U.S.C. §102 Rejections

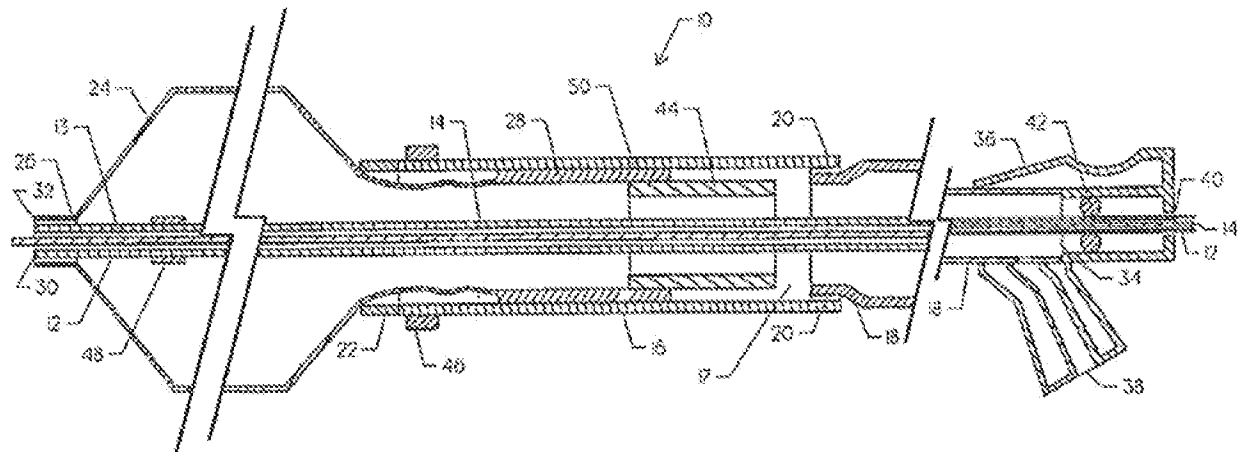
Claims 1, 4 and 5 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 5,514,093 to Ellis *et al.*, hereinafter "Ellis." Applicant traverses this rejection because Ellis fails to disclose all the elements of the claims. Claim 1 requires in part

a long, continuous aspiration shaft having a fixed length and an aspiration lumen extending between a distal aspiration port disposed at a distal tip of said aspiration catheter and a proximal aspiration port disposed at a proximal end of said aspiration catheter, said proximal aspiration port adapted to be joined to a source of negative pressure;

a proximal tube having a first lumen extending therethrough, wherein said proximal tube is slidably disposed over said aspiration shaft; and

a distal tube having a second lumen extending therethrough, wherein said distal tube is slidably disposed over said aspiration shaft distal to said proximal tube, said distal tube is slidably positionable within said first lumen. Emphasis supplied.

Ellis' FIG. 1 is provided herein for convenient reference. FIG. 3, which is explicitly cited in the rejections, differs from FIG. 1 mainly with respect to a type of seal between, e.g., element 28 and element 16. See col. 7, lines 8-14.



In the Detailed Action at page 2, lines 11-16, Ellis' tubular member 12 is considered to teach the aspiration shaft of claim 1, with the claim requirement "a proximal aspiration port adapted to be joined to a source of negative pressure" considered as being disclosed at Ellis col. 11, line 29. However, the proximal end of tubular member 12, which appears only in FIG. 1, is illustrated as merely an open end of guidewire lumen 13 for slidably receiving guidewire 14. See col. 7, lines 23-27. In FIG. 1, member 12 lacks a proximal port adapted to be joined to a source of negative pressure, as required in part by claim 1.

Furthermore, the rejection has mischaracterized the teachings of Ellis at col. 11, line 29, which is provided below for convenience. The cited text teaches nothing about the proximal end of tubular member 12, nor does the cited text teach anything about joining tubular member 12 to a source of negative pressure. Therefore, Ellis cannot be considered to teach the requirement in claim 1 of a "proximal aspiration port adapted to be joined to a source of negative pressure."

Column 11

... to partially expand the balloon 24 so that the balloon 24 may inflate. The seal element 70, in an activated position 71, prevents leakage around the outside diameter of the spacer and seal element 68, 70. 25

Similar to the inflation cycle, upon beginning deflation of the balloon 24, the cup-like seal element 68 which is distal 30 of the spacer 76 is moved to an activated position under vacuum. The seal element moves to an activated position 69

In the Detailed Action at page 2, line 18, Ellis' balloon 24 is considered to teach the distal tube of claim 1. The claim 1 limitation "said distal tube is slidably disposed over said aspiration shaft" is not recited in the rejection, and if it were recited, it would be a mischaracterization of Ellis. In fact, if balloon 24 were slidably disposed over tubular member 12, then such a construction would be inoperative for Ellis' intended purpose, which is to vary the inflatable length of balloon 24 by adjusting the portion of balloon 24 that is disposed within outer tube 16. Distal waist 26 of balloon 24 is secured to distal end 32 of tubular member 12, and the entirety of balloon 24 moves along with, not slidably over tubular member 12 in order for proximal waist 28 to be slid within lumen 17 of outer tube 16. See col. 7, lines 43-47, and col. 9, lines 33-36 *inter alia*. Thus, Ellis fails to teach any element corresponding to a distal tube "slidably disposed over said aspiration shaft," as required in part by claim 1. In summary, Ellis fails to disclose at least

the limitations of claim 1 directed to a proximal aspiration port and a distal tube. Therefore, the rejection of claim 1 under 35 U.S.C. §102(b) is improper.

Claim 4 depends from claim 1 and is patentable for the same reasons explained above with respect to claim 1. Furthermore, Ellis fails to teach the elements of claim 4, which requires

The aspiration catheter according to claim 1, further comprising a guidewire shaft having a guidewire lumen disposed adjacent to said aspiration shaft.

The outstanding rejection has considered Ellis' element 13 to comprise the guidewire shaft required in claim 4. See Detailed Action, page 2, last sentence. This rejection clearly mischaracterizes Ellis because element 13 is guidewire lumen 13 within tubular member 12, which, as explained above, has already been considered to correspond to the aspiration shaft of parent claim 1. Neither Ellis' single tubular member 12 nor single lumen 13 extending there through can reasonably be considered to correspond to two separate elements of claim 4, namely an aspiration shaft and a guidewire shaft. Nowhere does Ellis disclose a shaft having a lumen disposed adjacent to tubular member 12. Therefore, the rejection of claim 4 under 35 U.S.C. §102(b) is improper. Claim 5 depends from claim 4 and is patentable for the same reasons explained above with respect to claims 1 and 4. In consideration of the above arguments, Applicant respectfully requests that the rejections under 35 U.S.C. §102(b) be withdrawn.

#### 35 U.S.C. §103 Rejections

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of U.S. Patent Number 6,152,909 to Bagaoisan *et al.* Claim 2 depends from claim 1 and is patentable for the same reasons explained above with respect to claim 1.

Claim 6 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ellis in view of U.S. Patent Number 5,846,259 to Berthiaume. Claim 6 depends from claim 1 and is patentable for the same reasons explained above with respect to claim 1. In consideration of the above arguments, Applicant respectfully requests that the rejections under 35 U.S.C. §103(a) be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (978) 739-3075 (Eastern Time).

Respectfully submitted,

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